

Senate Bill 2 – An Act to provide for the collection and remittance of certain taxes by certain marketplace providers.

History/Purpose:

Senate Bill 2 requires on-line marketplace providers to collect and remit sales taxes on behalf of sellers using their marketplace.

A marketplace provider differs from a marketplace seller.

- **Marketplace provider** – an electronic platform connecting sellers and buyers and facilitating sales. (Examples: eBay, Etsy, Amazon Marketplace, etc.)
- **Marketplace sellers** – a seller of one's own inventory, using a marketplace provider.

What does SB 2 do?

1. Defines key terms – marketplace, marketplace provider, marketplace seller.
2. Requires marketplace providers to collect and pay sales tax on all sales made through the platform if certain thresholds are met.
3. Establishes a hold harmless provision.
4. Establishes the effective date of March 1, 2019, for this bill.

Key Terms Defined:

- Marketplace - any means by which any marketplace seller sells or offers for sale tangible personal property, products transferred electronically, or services for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state.
- Marketplace provider - is any person that facilitates a sale for a marketplace seller through a marketplace by:
 - Offering for sale by the marketplace seller, by any means, tangible personal property, products transferred electronically, or services for delivery into this state; and
 - Directly, or indirectly through any agreement or arrangement with third parties, collecting payment from a purchaser and transmitting the payment to the marketplace seller, regardless of whether the person receives compensation or other consideration in exchange for facilitating the sale or providing any other service.
- Marketplace seller - a retailer that sells or offers for sale tangible personal property, products transferred electronically, or services for delivery into this state, through a marketplace that is owned, operated, or controlled by a marketplace provider.

Who does this impact?

Marketplace providers are required to collect and pay sales tax on **all** sales it facilitates into South Dakota if the requirements of Section 5 are met. Senate Bill 2 uses the same thresholds as SB 106 (\$100,000 sales/200 transactions).

What does the hold harmless provision do?

1. The Section 6 hold harmless provision limits the penalty on a marketplace provider if they receive inaccurate information about goods and services from a marketplace seller.
2. A marketplace provider, when they collect and pay sales tax, relies on the information about the goods and services provided by a marketplace seller to properly apply the tax.
3. The provision only excuses up to 5% of the total sales tax due from the marketplace provider in a calendar year.
4. There is a sunset date of June 30, 2024, for this provision.
5. Other states that have passed marketplace legislation include a hold harmless provision.
6. It is important that states work closely with businesses in the implementation of these new laws post-Wayfair. Congress may become involved if this does not happen. The hold harmless provision will show good faith to all parties.

Why start March 1, 2019?

1. Gives marketplace providers appropriate time to prepare.
2. Provides efficiency for small businesses in South Dakota and across the nation that utilize marketplace providers.
3. Gives enough time to effectively communicate to impacted marketplace providers and marketplace sellers, and other stakeholders, to ensure a smooth implementation.
4. Other states that have passed marketplace legislation have also had a delayed implementation date to give marketplace providers a reasonable time to comply.
5. Marketplace providers can voluntarily comply at any time prior to March 1.